

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 945 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

JITENDRA CHHABILDAS DAVE & 1

Versus

STATE OF GUJARAT & 2

Appearance:

Shri A.J. PATEL, Advocate, for the Petitioner.

Shri T.H.SOMPURA, Assistant Government Pleader, for Respondent No. 1.

Shri A.B.MUNSHI, Advocate, for Respondent No.2.

Shri K.V. SHELAT, Advocate, for Respondent No. 3

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 15/03/96

The order passed by the Deputy Collector of Viramgam Prant at Ahmedabad (the First Authority for convenience) on 4th September 1993 in Con. Case No.38 of 1993 as affirmed in revision by the order passed by and on behalf of the State of Gujarat (the Revisional Authority for convenience) on 11th January 1995 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, the First Authority declared two transactions of sale of two pieces of land admeasuring 606 square yards and 1000 square yards from survey No.241/3 in all admeasuring 3743 square metres situated at Bodakdev within the urban agglomeration of Ahmedabad (the disputed land for convenience) to be contrary to section 7 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (the Fragmentation Act for brief) and set aside the sale transactions and imposed penalty of Rs.250 on the original owners and directed summary eviction of the purchasers therefrom.

2. The facts giving rise to this petition move in a narrow compass. The disputed land belonged to Dhanabhai Gokalbhai Patel and Chhotabhai Gokalbhai Patel (original respondents Nos.3 and 2 respectively herein). They filed their declaration in the prescribed form under section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Ceiling Act for brief) with respect to their holding within the urban agglomeration of Ahmedabad. The disputed land was shown in their holding. By the order passed by the Competent Authority at Ahmedabad on 13th December 1985 under section 8 (4) of the Ceiling Act, the holding of the declarants was declared surplus by 911 square metres. Its copy is at Annexure-B to this petition. It may be mentioned that the disputed land was treated as a 'vacant land' in the holding of the declarants. It appears that that order was neither carried in appeal under section 33 or in revision under section 34 thereof. It may be mentioned at this stage that a town planning scheme bearing Town Planning Scheme Bodakdev No.1 was proposed and in the proposed town planning scheme, the disputed land was styled as original plot No.16/3 and it was reconstituted as final plot No.16/3 after reducing the area of the original disputed land from 3743 square metres to 2698 square metres. It appears that a notice in that regard was issued to the original owners on 23.6.1983. Its copy is at Annexure-A to this petition. It appears that that Scheme was finalised and a copy of the redistribution statement in that regard is at Annexure-D to this petition. It

appears that, after the order at Annexure-B to this petition came to be passed, the original owners sought permission from the Competent Authority at Ahmedabad and by his order passed on 27th/28th February 1989, the permission was granted to them to sell 1000 square yards and 606 square yards from the disputed land to Jitendra Chhabildas Dave (petitioner No.1 herein) and Subhashchandra Chhabildas Dave (petitioner No.2 herein) respectively (copies thereof are at Annexures-F and G respectively to this petition). It appears that these transactions came to the notice of the First Authority. He found them in contravention of the relevant provisions contained in the Fragmentation Act. Thereupon, a show cause notice came to be issued on 16th June 1993 calling upon the petitioners and original respondents Nos.2 and 3 herein to show cause why the transactions of sale should not be cancelled and why penalty should not be imposed on them. Its copy is at Annexure-H to this petition. The proceedings arising therefrom came to be registered as Con. Case No.38 of 1993. On behalf of the petitioners, a reply thereto was filed on 30th July 1993. Its copy is at Annexure-I to this petition. After hearing the parties, by the order passed on 4th September 1993 in Con. Case No.38 of 1993, the First Authority declared the aforesaid sale transactions in favour of the petitioners herein to be invalid and imposed penalty of Rs.250 on original respondents Nos.2 and 3 herein and ordered summary eviction of the petitioners from the lands purchased by them. Its copy is at Annexure-J to this petition. That aggrieved the petitioners herein. They carried the matter in revision before the Revisional Authority. A copy of the memo of revision is at Annexure-K to this petition. By the order passed by the Revisional Authority on 11th January 1995 but communicated on 31st January 1995, the revisional application came to be rejected. Its copy is at Annexure-M to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-J to this petition as affirmed in revision by the order at Annexure-M to this petition.

3. Learned Advocate Shri Patel for the petitioners is right in his submission to the effect that, in order to take action under the Fragmentation Act, the land or lands in question should answer the definition of 'fragment' contained therein. It has been urged by learned Advocate Shri Patel for the petitioners that, if the lands in question are not fragments within the meaning of the Ceiling Act, no action whatsoever can be

taken under the Fragmentation Act. As against this, learned Assistant Government Pleader Shri Sompura has urged that the First Authority found the land to be a fragment and the action taken for breach of the Fragmentation Act would call for no interference by this court in this petition under Articles 226 and 227 of the Constitution of India.

4. In order to appreciate rival submissions urged before me, it would be quite proper to look at the definitions of 'fragment' and 'land' contained in section 2 (4) and section 2 (5) respectively of the Fragmentation Act. 'Fragment' thereunder is defined to mean a plot of land of less extent than the appropriate standard area determined thereunder. 'Land' has been defined to mean agricultural land whether alienated or unalienated. It will thus become clear that, in order to be a fragment, land in question should be a piece of agricultural land of less extent than the appropriate standard area determined under the Fragmentation Act. Learned Advocate Shri Patel for the petitioners submits that the disputed land seized to be a piece of agricultural land on applicability of the Ceiling Act thereto.

5. It would be quite proper to look at the definition of 'vacant land' contained in section 2 (q) of the Ceiling Act. It excludes from its purview land mainly used for the purpose of agriculture. It thus becomes clear that, if a parcel of land is used mainly for agricultural purpose, it would fall outside the purview of the expression 'vacant land' as defined in section 2 (q) of the Ceiling Act. I am fortified in my view by the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF UTTAR PRADESH reported in AIR 1993 SUPREME COURT at page 2465.

6. It transpires from the order at Annexure-B to this petition that the Competent Authority at Ahmedabad has found the disputed land to be 'vacant land' in the holdings of the original owners (original respondents Nos.2 and 3 herein). Once it is found to be 'vacant land', it would mean that it was not used for agricultural purpose, mainly or otherwise. If it was so, the Competent Authority might not have declared it to be 'vacant land'. It therefore becomes clear that the disputed land was not used for agricultural purpose on the date of coming into force of the Ceiling Act.

7. At this stage the court cannot lose sight of the fact that, by his orders passed on 27th/28th February 1989 at Annexures-F and G to this petition, permission

under section 26 (2) of the Ceiling Act was granted to sell certain two parcels of land therefrom to the petitioners herein. Such permission could have been granted by the Competent Authority under section 26 (2) of the Ceiling Act only if the land was 'vacant land' for the purposes thereof. It thus becomes clear that the disputed land was treated as 'vacant land' for the purposes of the Ceiling Act.

8. At this stage a reference deserves to be made to section 42 of the Ceiling Act. It provides for giving an overriding effect to the provisions of the Ceiling Act notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority. In that view of the matter, even if the First Authority might have found that the disputed land was used for agricultural purpose, its finding will have no effect whatsoever in view of the overriding effect given to the Ceiling Act by virtue of section 42 thereof. In fact, that finding made by the First Authority is not supported by any material on record. It appears to be ipse dixit. Even then also, it is of no consequence in view of section 42 of the Ceiling Act.

9. In view of my aforesaid discussion, I am of the opinion that the disputed land was not a fragment, in any case after coming into force of the Ceiling Act. The impugned order at Annexure-J to this petition was passed nearly 17 years thereafter treating the disputed land as a fragment. It cannot therefore be sustained in law and the order at Annexure-M to this petition affirming the impugned order at Annexure-J to this petition also cannot be sustained in law.

10. In the result, this petition is accepted. The order passed by the Deputy Collector of Viramgam Prant at Ahmedabad on 4th September 1993 in Con. Case No.38 of 1993 at Annexure-J to this petition as affirmed in revision by the order passed by and on behalf of the State of Gujarat on 11th January 1995 but communicated on 31st January 1995 at Annexure-M to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs. Direct Service is permitted.

#####